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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,931	11/13/2003	Adrian Pfenniger	117203	6566

25944 7590 02/07/2005

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EXAMINER

DEVORE, PETER T

ART UNIT PAPER NUMBER

3751

DATE MAILED: 02/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/705,931	<b>Applicant(s)</b> PFENNIGER	
	<b>Examiner</b> Peter T deVore	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12/10/04.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-4 and 6-18 is/are rejected.  
7) ☒ Claim(s) 5 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/10/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 3, 6, 9, 12, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Evancic.

The Evancic reference discloses a toothbrush comprising a toothbrush body with a head 12, bristles 14, a neck (proximate reference numeral 28 in Fig. 3), and a handle part/container holder (proximate reference numeral 9 in Fig. 3), a toothpaste container with a container body/handle shell part 4 and a dispensing head 7, a protrusion/groove (claims 6 and 12) or, alternatively a ridge/incision (claim 9) latching arrangement (see interface between toothbrush body and toothpaste container in Fig. 3), a restraining element 25.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evancic.

The Evancic reference discloses a toothbrush as discussed supra, but remains silent as to the viscosity of toothpaste or size of outlet. However, it would have been obvious to select a toothpaste viscosity and outlet size in the claimed ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 2336.

Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Evancic in view of Collins.

The Evancic reference discloses a toothbrush as discussed supra, but does not disclose that the handle part/container holder asymmetrically engages around the container body. However, attention is directed to the Collins reference which discloses a similar toothbrush including a portion 5 of handle part/container holder asymmetrically engaging container body C for additional support of the container body. It would have been obvious to one of ordinary skill in the art to modify the handle part/container holder of the Evancic toothbrush to asymmetrically engages around the container body in view of Collins for additional support of the container body.

Claims 7, 8, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evancic in view of Jackson.

The Evancic reference discloses a toothbrush as discussed supra, but does not disclose a pin/spike to seal the container. However, attention is directed to the Jackson reference which discloses a similar toothbrush including a pin/spike 17 to seal the

toothpaste container when not in use. It would have been obvious to one of ordinary skill in the art to employ a pin/spike on the Evancic toothbrush in view of Jackson to seal the toothpaste container when not in use.

Claims 11, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evancic in view of Voigt.

The Evancic reference discloses a toothbrush as discussed supra, but does not disclose that the toothpaste container is translucent with a scale. However, attention is directed to the Voigt reference which discloses a similar toothbrush including a translucent toothpaste container 72 with a scale 74 so that the user can easily determine the amount of toothpaste remaining. It would have been obvious to one of ordinary skill in the art to modify the Evancic toothpaste container to be translucent and have a scale in view of Voigt so that the user can easily determine the amount of toothpaste remaining.

#### ***Allowable Subject Matter***

Claims 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments with respect to claims 1-18 have been considered but are moot in view of the new ground(s) of rejection.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter T deVore whose telephone number is (571) 272-4884. The examiner can normally be reached on Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PdPd

Peter T deVore